MODIFIED PTO/SB/33 (09-08)
Approved for use through 10/31/2008. OMB 0651-0031

PRE-APPEAL BRIEF REQUEST FOR REVIEW

		Docket Number Q103095
I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)] on _____	Application Number 10/510,274	Filed October 5, 2004
	Confirmation Number: 1567 First Named Inventor Pierre ROUX	
Signature Typed or printed name	Art Unit 2617	Examiner Michael T. THIER

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a Notice of Appeal.

The review is requested for the reason(s) stated on the attached sheet(s).
Note: No more than five (5) pages may be provided.

☑ The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

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I am the

☐ applicant/inventor.

☐ assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)

☑ attorney or agent of record. Registration number 28,703

☐ attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 _____

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November 15, 2010
Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.

☑ *Total of 1 form is submitted.

PATENT APPLICATION

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of	Docket No: Q103095
Pierre ROUX, et al.	
Appln. No.: 10/510,274	Group Art Unit: 2617
Confirmation No.: 1567	Examiner: Michael T. THIER
Filed: October 5, 2004	

For: METHOD FOR CONTROLLING RADIO RESOURCES ASSIGNED TO A COMMUNICATION BETWEEN A MOBILE TERMINAL AND A CELLULAR INFRASTRUCTURE, AND FACILITIES

PRE-APPEAL BRIEF REQUEST FOR REVIEW

MAIL STOP AF - PATENTS
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Pursuant to the Pre-Appeal Brief Conference Pilot Program, and further to the Examiner's Final Office Action dated May 14, 2010, Applicant files this Pre-Appeal Brief Request for Review. This Request is also accompanied by the filing of a Notice of Appeal.

Claims 1-50 stand in the application. The examiner has indicated allowable subject matter in claims 15, 18, 19, 21, 23, 34, 36 and 37. Claims 1, 25, 38 and 44 are rejected for obviousness-type double patenting over co-pending application 10/483,119 in view of Takenaka et al (USP 5,585,805).[1] Claims 1-4, 6-8, 11, 13, 14, 25, 26, 28-30, 32, 33, 38 and 40-46 are

[1] Although not included in the double patenting rejection as stated at page 5 of the Office action, , the examiner later (at the bottom of page 7) refers to claims 2-24, 26-37, 39-43 and 45-46 as depending from claims 1, 25, 38 and 44 "and therefore rejected for the same reasons." If a parent claim is unpatentable, it does not at all follow that all dependent claims are also necessarily unpatentable, so this statement is not understood. So it is not clear if these claims have been rejected for obviousness-type double patenting and, if so, is also not clear what the rationale is for that rejection. This deficiency will be moot in view of the lack of a prima facie case for the rejection of the parent claims, but applicant reserves the right to argue the separate patentability of the dependent claims.

rejected for as unpatentable over Tiedemann et al (WO 99/13675) in view of Takenaka et al. Clams 5, 27, 12 and 31 are rejected as unpatentable over Tiedemann et al in view of Takenaka et al and further in view of Davis et al (USP 6,260,062). Claims 9 and 10 are rejected as unpatentable over Tiedemann et al in view of Takenaka , and further in view of Takeo (USP 6,385,183). Claims 16, 17, 20, 24 and 35 are rejected as unpatentable over Tiedemann in view of Takenaka et al and further in view of Akatsu et al (USP 6,505,255). Claims 39 and 53 are rejected as unpatentable over Tiedemann et al in view of Takenaka et al and further in view of Sudo (USP 6,625,202). Claims 47-50 are rejected as unpatentable over Tiedemann in view of Takenaka et al, and further in view of Ichiyanagi (USP 5,867,769). Central to all of the rejections is the alleged obvious modification of Tiedemann in view of Takenaka et al, and that will be the focus of the discussion below.

The present invention is a technique of managing resources in a mobile communications system, where the mobile terminal is in communication with plural different fixed transceivers, and parameters of the propagation channels between the mobile terminal and each of the transceivers are measured. A report based on these measurements is sent to the radio network controller, and the radio network controller then processes the reports to control the network resources accordingly. This is as described in the present specification beginning at line 24 of page 4 through line 5 of page 5, beginning at line 12 of page 21, and elsewhere. A distinctive feature of the present invention is that the data included in the reports sent to the network controller includes data representing a time variability of the power level received on the channel between the mobile terminal and the fixed transceiver. This is described at lines 6-10 of page 5. Examples are given elsewhere in the specification, e.g., lines 8-13 of page 7 describe that it can be the variance of the data. It is important to note that an average of the data over some period of time does not represent time variability of the data, because the power level could theoretically be constant over an entire period or varying constantly above and below an average, and stll have the same average value.. And it is further clear from the specification and claims that this is how the term "time variability" is used. For example, note that claim 2 states that the variability data of a power level ***include*** an estimated variance of a time distribution of said power level, but when claim 4 talks about the average value of a power it states that this is ***in addition*** (i.e., "further comprises"), and notably does not state that this is part of the variability data.

In both the double patenting rejection and in the 35 USC 103 rejections, the examiner acknowledges that the primary reference (either the claims of the co-pending application or the teaching of Tiedemann et al) fails to teach the claimed measurement parameters that include time variability of the received power level, and he relies on Takenaka et al to teach this feature.

Takenaka et al describes various circumstances in which it would be desirable to detect the velocity of a mobile terminal, and then proposes a number of different embodiments where measurements are taken to determine the time variability of the received power level at either the mobile terminal or the base station over a channel between the mobile terminal and base station, and this time variability data is then used to determine the velocity of the mobile terminal. So the cited secondary reference does indeed teach measuring time variability of received power level. But the simple teaching of measuring time variability of received power level is not enough to render the claimed invention obvious. The examiner is simply finding unpatentability because separate features of the invention are taught, without regard as to whether there is any suggestion or direction in the prior art, or any apparent logical reason, for combining the features of the various references in the manner necessary to achieve the claimed invention.

The independent claims of the present application recite that report messages are sent to the radio network controller and that these report messages include data on the time variability of the received power level. To satisfy the language of the appealed claims requires not only data relating to the time variability of the received power level but also that this data relating to time variability of the received power level be sent to the radio network controller.

Takenaka et al describes various ways of detecting the travel velocity, but never describes or gives any reason for sending this information to the radio network controller. Further, *if* Takenaka did give a reason for sending the information to the radio network controller, what would be sent is the information regarding the travel velocity of the mobile terminal, not data regarding the time variability of the received power level. In every embodiment described in Takenaka et al, the time variability information is used to generate an indication of travel velocity, and this travel velocity determination is done at the same location (i.e., either at the mobile terminal or at the base station) where the power level measurements are made. If for some reason it was decided that the radio network controller needed to know the travel velocity of the terminal, the travel velocity would be sent. This would still not satisfy the claim

requirement of sending messages including data representing a time variability of received power level.

Applicant pointed out in the response filed March 18, 2010 that there was no reason apparent from Tiedemann or Takenaka to send to the radio network controller any data representing time variability of the received power level, and that if the teachings of the two references were combined, the result would simply be the Takenaka et al system which would also have a mechanism for determining the velocity of the mobile terminal, but no transmission of time variability information to the radio network controller. In the final action mailed May 14, 2010, the examiner dismisses this issue by arguing that he is not relying on Takenaka et al to teach sending information to the radio network controller but instead relies on Tiedemann to teach measuring data and sending it to the radio network controller, and is only relying on Takenaka et al to teach different data that can be measured. But the examiner misses the point entirely. Tiedemann measures certain data and sends that to the radio network controller because Tiedemann recognizes a need or purpose in sending that data to the radio network controller. Simply because other data exists does not lead to a conclusion that it would have been obvious to send that other information to the radio network controller. The mobile terminal in Tiedemann probably also measures other data, e.g., remaining battery life, but does not describe sending that to the radio network controller. It would be a waste of bandwidth and would lead to unnecessary circuit complexity to handle data transmission that was simply not needed. In the absence of any teaching in Tiedemann or Takenaka et al of some reason for sending the data to the radio network controller, the examiner has simply not presented a prima facie case of obviousness.

Further, again, even if the examiner were to point to some teaching in Takenaka et al that the radio network controller has need of the travel velocity information, that would at best lead to the sending of the determined travel velocity information. But that would not be data representing the time variability of the received power level. One could not determine the time variability of the received power level from the end result of travel velocity.

Finally, there is no reason apparent, and none suggested by the examiner, as to why one of skill in the art would send power time variability information to the radio network controller in Tiedemann. The radio network controller in Tiedemann has no use for this information. And,

as note above, if there were some reason it wanted to know the velocity of the mobile, the mobile would simply send that velocity information.

The examiner further ignores features of various dependent claims that simply have no relation to what is taught in Tiedemann or the other art. For example, claims 2 and 3 describe the data as an "estimated variance." The examiner relies on Tiedemann's teaching of an average power level measurement, but the two fatal flaws in this reasoning are that (1) if the artisan were indeed to send an average, the information representing time variability would be lost, and in any event (2) whatever is sent would not be an estimated variance.

And claim 3 recites that the time variability data further comprise at least one estimation of a moment of order greater than 2 of said time distribution of the power level. Determining a moment of order (i.e., exponent) greater than two is described at lines 1-6 of page 22 of the present application. This is completely different from an average taken over two time periods.

Claim 4 requires that the report include average data in addition to the time variability data, and this of course makes no sense if one reads time variability data as meaning average data, as the examiner seeks to do.

Conclusion –

The prior art does not teach sending time variability information of receive power to the radio network controller, and the examiner has himself give no reason why the radio network controller would have any use for receiving data representing time variability of received power level. Accordingly, all rejections should be withdrawn.

Respectfully submitted,

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